



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Valerie L. Augustus, M.D.; Decision and Order

On August 5, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Valerie L. Augustus, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FA8056043 at the registered address of 2205 West Street, Germantown, TN 38138. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "without authority to handle controlled substances in the State of Tennessee, the state in which [she is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA,<sup>1</sup> which was received on December 5, 2022.<sup>2</sup>

#### FINDINGS OF FACT

On July 21, 2021, the Tennessee Board of Medical Examiners issued a Final Order suspending Registrant's Tennessee medical license. RFAAX 2, at 5, 8, 11.

According to Tennessee's online records, of which the Agency takes official notice, Registrant's license is still suspended.<sup>3</sup> Tennessee Department of Health License Verification,

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<sup>1</sup> The Government's RFAA is dated November 15, 2022. RFAA, at 5.

<sup>2</sup> Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

<sup>3</sup> Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to

<https://apps.health.tn.gov/Licensure/default.aspx> (last visited date of signature of this Order).

Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in Tennessee, the state in which she is registered with the DEA.

## DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).<sup>4</sup>

According to Tennessee statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Tenn. Code Ann. § 39-17-402(7) (2022). Further, a “practitioner” means “a physician . . . or other person licensed, registered or otherwise permitted to distribute,

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the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

<sup>4</sup> This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.” *Id.* at § 39-17-402(23)(A).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Tennessee. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Tennessee. Thus, because Registrant lacks authority to practice medicine in Tennessee and, therefore, is not authorized to handle controlled substances in Tennessee, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

### **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FA8056043 issued to Valerie L. Augustus, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Valerie L. Augustus, M.D., to renew or modify this registration, as well as any other pending application of Valerie L. Augustus, M.D., for additional registration in Tennessee. This Order is effective **[INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

### **SIGNING AUTHORITY**

This document of the Drug Enforcement Administration was signed on December 27, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,  
Federal Register Liaison Officer,  
Drug Enforcement Administration.

[FR Doc. 2023-00009 Filed: 1/5/2023 8:45 am; Publication Date: 1/6/2023]